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February 7, 2005

Hon. John Cornyn
Committee on the Judiciary
U.S. Senate
517 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Cornyn:

In 1996 and 1997, at the direction of the Congress, the National Bankruptcy Review Commission conducted a comprehensive assessment of the federal bankruptcy code. I was the chairperson of that nine-member, bipartisan citizen commission. Its review led to a 1500-page report and 172 recommendations for improving the country's bankruptcy law. Many of those recommendations have been incorporated in the comprehensive bankruptcy legislation that has been introduced, but never enacted, over the last eight years.

The Senate Judiciary Committee soon will take up S. 256, essentially the same bankruptcy legislation that has been before the Congress in every session since 1997. Whatever its merits, the proposal shares the same glaring defect that has characterized other bankruptcy "reform" bills. It ignores the forum shopping that has become an inefficient and prejudicial hallmark of Chapter 11's provisions for corporate reorganization.

The law today, as you well know, permits a company to choose a judicial forum in which to reorganize based on its state of incorporation or the place where an affiliated corporation has filed a Chapter 11 petition. That means that a corporation can determine its future—and the future of its employees, pensioners, suppliers, and creditors—thousands of miles from its principal place of business or the location of its principal assets. That is neither efficient nor fair.

Recognizing that, the National Bankruptcy Review Commission voted overwhelmingly (with but a single dissent) to recommend changing the bankruptcy code to limit the venue choices available to a corporate debtor. The legislation you are proposing, either as a bill or as an amendment to S. 256, would essentially codify the Commission's findings and recommendation.

As a practicing attorney in Wisconsin, I have seen major corporations in this state take their Chapter 11 proceedings to other jurisdictions. The ultimate outcome of the proceedings may or may not have been affected by the choice of venue, but it is certain that the company's employees, creditors, and suppliers in this state were deprived of a meaningful opportunity to monitor the proceedings and to participate in them effectively and efficiently.

The venue provisions of the bankruptcy code, with or without comprehensive "reform" legislation, should be changed. The empirical data support the cause of change and so do the interests of judicial economy and efficiency. The fate of major corporations, whether in Wisconsin or in Texas, should be decided by the federal courts in those states, not hundreds or thousands of miles away. I write to support your proposal. Please let me know if you have any questions about the Commission's work or its unequivocal conclusions on this important issue.

Brady C. Williamson

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